

LUCAS M. CASTAÑOS AND PAQUITO PEREGRINO, PETITIONERS, VS. JUDGE FRANCISCO H. ESCAÑO, JR., RESPONDENT.

A.M. No. RTJ-93-955. December 12, 1995

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PER CURIAM:

The power of contempt is power assumed by a court or judge to coerce cooperation and punish disobedience, disrespect or interference with the court's orderly process. Of course, a summary punishment is usually exacted. It is agreed that, by tradition and necessity, the contempt power was given to the courts in trust for the public. Respect for courts, which are ordained to administer the laws which are necessary to the good order of society, is as necessary as respect for the laws themselves.

Considering this awesome power of courts, to what extent can it be exercised? What are its limitations?

In view of the weakness by which we view the evidence as to the main charges in this case, what looms large as an issue is respondent's exercise of his inherent power of contempt.

The career of a judge, as required in the Code of Judicial Conduct,[1] entails the highest degree of competence, integrity and independence, because a judge ought to be the embodiment of all that is good, efficient, competent, honest and reliable. Woe unto the magistrate who is wanting in any of these virtues. In view of the adversarial nature of our system of administering justice, a judge is almost always the object of hate, venom, and contempt - and of administrative or criminal charges - feigned or illusory. It is thus the policy of this court that administrative charges against a judge must be heard with utmost care and circumspection. And so, we did in this case.

The petitioners, in two separate pleadings which were surprisingly both filed on February 12, 1993, seek the dismissal of respondent Presiding Judge of Branch 12 of the Regional Trial Court of Ormoc City (concurrently the Executive Judge), charging him with Grave Misconduct, Abuse of Authority and Acts Unbecoming a Member of the Judiciary.

The petition of Mr. Lucas Castaños,[2] a First Assistant Prosecutor of Ormoc City, charged that respondent judge acquitted the accused Francisco Agapito in a criminal case for illegal logging in consideration of the payment to him of the sum of P50,000.00.

The complaint of Mr. Paquito Peregrino,[3] now an inmate at the Leyte Regional Prison at Abuyog, Leyte, alleges that he was convicted in a criminal case for Illegal Possession of Firearms on account of his failure to raise the amount of P25,000.00 demanded from him by the respondent judge in exchange for his exoneration.

During the investigation of complainant Peregrino's charges, no evidence was adduced by Peregrino. The pronouncement that, as to complainant Peregrino's complaint, there has been a failure to prosecute is in order.

As to Prosecutor Castaños' petition, salient allegations thereof appear to be that the petitioner came across a letter purportedly from a leftist organization, signed by one Commander Kontra Abuso, addressed to the Honorable Chief Justice and copies thereof furnished to PACC Chairman Joseph Estrada and the Mayor of Ormoc City, wherein certain incidents of graft and corruption allegedly committed by the respondent judge were

enumerated;[4] that one among the extortion cases listed involved the case of Francisco Agapito, accused in Criminal Case No. 3567, which was heard in the sala of respondent judge;[5] that the petitioner was the prosecutor in said criminal case, entitled "People of the Philippines versus Francisco Agapito, et al." for the Violation of Section 68 of PD No. 705;[6] that on October 31, 1990, counsel for the accused Agapito moved to quash the information in said case invoking double jeopardy, Criminal Case No. 3463, entitled "People of the Philippines versus Francisco Agapito", a case of the same nature, having been earlier dismissed;[7] that the petitioner vehemently opposed the accused's motion to quash;[8] that on November 8, 1990, the respondent judge denied the motion to quash and on March 15, 1991, the accused's motion for reconsideration was likewise denied;[9] that on August 31, 1991, after trial on the merits, the respondent judge dismissed Criminal Case No. 3567 on account of double jeopardy much to the complainant's surprise;[10] that subsequently, by virtue of the Commander Kontra Abuso letter, the petitioner concluded that the acquittal of accused Agapito was effected because of respondent's receipt of P50,000.00 extorted from accused Agapito;[11] and that, upon instruction of incumbent Mayor of Ormoc City, Hon. Eufrocino Codilla, Sr., the petitioner conducted an inquiry which thereafter disclosed details of an extortion perpetrated by respondent judge on accused Agapito.[12]

On February 15, 1993, the then Deputy Court Administrator Eutropio Migriño, acting favorably on Prosecutor Castaño's petition, recommended an investigation in relation thereto.[13]

On February 23, 1993, a Manifestation was filed by the petitioner's witness, Francisco Agapito, informing this Court that, because of the affidavit which he executed in support of the petitioner's administrative charges, respondent judge improvidently issued an Order, dated February 16, 1993, directing him to show cause why he should not be held in contempt of court inasmuch as his allegations in the said affidavit were outrageous lies that tended to degrade the administration of justice.[14]

On March 12, 1993, Prosecutor Castaños filed with this Court an Urgent Motion to Place Respondent under Preventive Suspension Pending Investigation.[15]

On March 15, 1993, this Court issued a Resolution: (1) placing the respondent judge under preventive suspension effective upon his receipt thereof; (2) ordering the respondent judge to answer the charges against him within ten (10) days from notice; and (3) designating then Court of Appeals Associate Justice Reynato Puno to investigate the case and submit his Report and Recommendation within thirty (30) days from commencement of the investigation.[16]

On March 29, 1993, this Court resolved to forward to the Investigating Justice the letter, dated February 22, 1993, of Mrs. Lydia T. Escaño, wife of the respondent judge, received by the Office of the Chief Justice on March 2, 1993, wherein Mrs. Escaño begged the indulgence of this Court in respect to her plea for assistance with respect to her husband's case.[17]

On the same date, the respondent judge filed an ex--parte motion to set aside our Resolution, dated March 15, 1993, insofar as it placed respondent under preventive suspension.[18]

On March 31, 1993, we resolved to hold in abeyance the effectivity of the preventive suspension of the respondent judge.[19]

On April 20, 1993, the respondent judge filed his answer with the following counter-statements, to wit:

"I. Both Petition and Complaint were filed as a means to cover-up petitioner Lucas Castaños' corrupt activities and gross immoral conduct in public office.

II. Both Petition and Complaint were filed as a part of Ormoc City Mayor Eufrocino Codilla's desire to remove respondent from Ormoc City by any means in order to replace respondent with another judge who would do

the mayor's biddings.

III. Both Petition and Complaint are outrageous and vicious lies designed to put the person of the respondent and his court in disrepute."^[20]

On June 15, 1993, the investigation of this case was set on July 21, 22 and 23 of the same year at the Moran Hall of the Court of Appeals. However, in view of the appointment of the then Investigating Justice, the Honorable Reynato Puno, to the Supreme Court, the settings were canceled.^[21]

On July 7, 1993, we directed Court of Appeals Associate Justice Bernardo Pardo to take over the investigation of this case.^[22]

Hearings were conducted on August 20, 1993 and on September 1, 2 and 6, 1993 and both parties submitted their respective Memoranda. Justice Pardo found the following antecedent facts established:

"1. On July 28, 1988, Judge Francisco H. Escaño, Jr. was appointed presiding judge of the Regional Trial Court, Branch 12, Ormoc City;

2. On March 23, 1990, Prosecutor Lucas M. Castaños filed an information with the Regional Trial Court, Branch 12, Ormoc City, docketed as Criminal Case No. 3567-0, against Francisco Agapito, for illegal logging;

3. On November 5, 1990, accused Agapito filed a motion dated October 31, 1990, to quash the information on the ground of double jeopardy;

4. On November 8, 1990, respondent judge denied the motion to quash. He ruled that the first case was for a different offense, and, hence, there was no second jeopardy;

5. On November 19, 1990, accused Agapito filed a motion for reconsideration of the denial;

6. On March 15, 1993, respondent judge denied the motion. Accordingly, he proceeded with the trial of the case;

7. After trial, on May 6, 1991, the respondent judge declared the case submitted for decision and scheduled the promulgation of the decision on July 10, 1991. The clerk of court issued notices of the promulgation to the accused through his counsel, and to the City Prosecutor of Ormoc City;

8. On or about the end of June, 1991, accused Agapito went to the courthouse at Ormoc City to verify the status of the case. At that time, the respondent judge was conducting trial. After the trial, a clerk asked the accused Agapito to go to the office of the judge;

9. In his chambers, respondent Judge Escaño told accused Agapito that his case was a serious one and that he could be convicted. However, respondent Judge Escaño added that he (Agapito) could be acquitted if he could afford the respondent's demand for the amount of P70,000.00. Agapito negotiated to lower the amount to P50,000.00, to which the respondent judge agreed. Before Agapito left the judge's chambers, respondent judge advised Agapito to ask his counsel to file a motion to postpone the promulgation scheduled on July 10, 1991. Accordingly, on July 8, 1991, the accused Agapito through counsel filed a motion to postpone the promulgation on the ground that he was sick, accompanied by a medical certificate.

10. On July 10, 1991, in open court, on calling the case for promulgation of decision, respondent judge postponed the promulgation to August 16, 1991, without any further written order;

11. In the meantime, accused Agapito, to raise money, decided to sell his newly assembled passenger jeepney. He was able to sell it to a certain Capt. Dominador Cayanong, a harbor pilot, who agreed to buy the jeep for P75,000.00. Agapito received the proceeds of the sale on August 2, 1991, and he segregated P50,000.00, and wrapped it in a newspaper. Policeman Efren Abanes, who helped Agapito sell the jeepney, accompanied him

to the house of the respondent judge in Ormoc City. Abanes tried to persuade Agapito to have the money marked but the latter declined saying that he would not want to risk being convicted. Agapito proceeded to the house of respondent judge Escaño in Mejia Subdivision, Ormoc City. After being allowed to enter the house, Judge Escaño received him. Agapito gave the money to Judge Escaño, who counted the money and finding the amount to be exact, accepted it. He told Agapito that no one must know about what transpired. Agapito assured respondent judge that nobody would know about it. Agapito then left the judge's residence and proceeded home.

12. On August 16, 1991, respondent judge promulgated his decision dismissing the case against Agapito on the ground that the information was invalid as no new information was filed after the court ordered the conduct of a preliminary investigation, and that, in addition, there was double jeopardy because the previous information against the accused was for the same offense."[23]

In his nine-page Report and Recommendation, dated November 19, 1993, Justice Pardo found the respondent judge guilty of Grave Misconduct in Office and recommended his dismissal from the service, with prejudice to reinstatement or appointment to any branch or agency of the government, including government-owned or controlled corporations and the forfeiture of his retirement benefits, if any.

Understandably, he found the testimony of the witness for the petitioner, Francisco Agapito, credible enough to rectify inconsistencies obtaining in his Affidavit, dated November 18, 1992. Thus, he gave credence to testimony that respondent judge accepted the amount of P50,000.00 in the night of August 2, 1991 from the then accused Agapito in consideration of Agapito's acquittal in the illegal logging case pending in the respondent's sala. The act, he believes, warranted the penalty of dismissal.[24]

The Investigating Justice observed that, as to this charge, the respondent judge had only his bare denial to rely on and held the view that the following acts of the respondent judge rendered suspect his dismissal of the illegal logging case against Agapito, namely: (1) that although the promulgation of the decision in the said illegal logging case was set on July 10, 1991, the respondent judge granted the accused's motion to postpone the same on July 8, 1991 without any confirmatory written order; (2) that on August 16, 1991, the respondent judge promulgated his "decision", dated August 13, 1991, which "decision" was not based on the merits considering that the dismissal of the case was on a technicality, the information being invalid; and (3) since the dismissal of the case was based on a mere technicality, the proper way to dispose of the said case should be by an order or resolution, which did not have to be promulgated.[25]

Upon a circumspect and painstaking examination of the records of this case, the Lucas M. Castaños' petition, we find that the evidence in support thereof deserves but scant consideration because of impaired credibility.

Firstly, as correctly pointed out by the Investigating Justice, an accusation of bribery is easy to concoct and difficult to disprove. Thus, to our mind, the complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the bench, the quantum of proof required should be more than substantial. We have held in the case of *Lopez v. Fernandez*[26] that:

"(N)umerous administrative charges against erring judges have come to this Court and We viewed them with utmost care, because proceedings of this character, according to *In Re Horrilleno* (43 Phil. 212 [1922]), as set forth in the opinion of Justice Malcolm, are in their nature highly penal in character (Underscoring supplied) and are to be governed by the rules of law applicable to criminal cases. The charges must therefore, be proved beyond a reasonable doubt. This 1922 decision has been subsequently adhered to in a number of cases decided by this Court."[27]

Justice Malcolm, in the aforecited Horrilleno case, further enunciated that:

"xxx (F)or serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules." [28]

The petitioner in this case anchored his bribery charge against the respondent judge on an affidavit, dated November 18, 1992, executed by Agapito, one of the accused in the subject criminal case for illegal logging, wherein Agapito manifested that he delivered P50,000.00 to respondent judge sometime in the evening of an unspecified date in June, 1991, inside the Judge's rented house at Mejia Subdivision, Ormoc City.

The said affidavit essentially reads:

"I, FRANCISCO AGAPITO, of legal age, married and a resident of Brgy. Naungan, Ormoc City, after having been duly sworn to in accordance with law hereby depose and say:

That sometime in June 1991 at 10:00 P.M. inside his rented house, at Mejia Subd., Ormoc City, Judge Francisco Escaño, Jr. requested his maid to open the door and then he led me to his living room;

He warned me that nobody should know of our meeting that night because if somebody would come to know I would be convicted in Criminal Case No. 3567-0 which was pending at that time in his sala;

He told me that I would be acquitted provided I could give him the amount of P70,000.00;

That I bargained for P50,000.00 and to which he agreed;

That on that same night, I gave him the cash amount of P50,000.00 and which he received. Then, he promised me that my acquittal in Criminal Case No. 3567-0 is sure." [29] (Italics supplied)

Agapito's affidavit was executed in November, 1992. Barely a year later, that is, in August, 1993, Agapito testified differently before the Court of Appeals Justice who investigated this case. An excerpt of the transcript of his testimony is revealing:

"ATTY. TAN

Q

Do you recall having executed an Affidavit stating therein the facts concerning the demand for money by respondent Judge Escaño in return for the dismissal of the case or the acquittal of the case against you?

A

Yes, sir.

Q

Showing to you this Affidavit signed by the affiant named Francisco Agapito and notarized by Regulo Bantasan on November 18, 1992. Is this the same Affidavit you have executed? (sic)

A

Yes, sir, but except for the date of the Affidavit which should have been August 2.

Q

You said a short while ago that there was something wrong with this Affidavit, could you please elaborate on what particular subject you referred to. What particular date is wrong with this Affidavit?

RESPONDENT

If Your Honor please, I am at a loss whether to object or not on questions that are objectionable considering that the Honorable Investigator has his own procedure of conducting this investigation. So, may I inquire, Your Honor please, if matters that are not alleged in the complaint maybe allowed in the direct examination for purposes of this investigation.

INVESTIGATOR

You can object as much you want. I never stop you from objecting. You state the ground of your objection.

RESPONDENT

Because in this particular case an Affidavit was executed by the witness and which Affidavit was made the basis of the complaint. Under the best evidence rule, the best evidence is the contents of the Affidavit itself. The question now is, these matters have been traversed already in the pleading. The issues have been joined and the parties already submitted their respective pleadings. The question now, should we tend to prove matters which were not alleged in the Complaint?

INVESTIGATOR

But it is in relation to matters alleged in the Complaint.

Witness may answer.

WITNESS

A

Yes, sir, it is referring to a date on the second paragraph.

ATTY. TAN

The witness is referring to the second paragraph of his Affidavit, which reads: 'That sometime in June, 1991 at 10:00 P.M. inside his rented house, at Mejia Subd., Ormoc City, Judge Francisco Escaño, Jr., requested his maid to open the door and then he led me to his living room.'

Why, what is wrong with this date, June, 1991 stated in the Affidavit?

A

Yes, sir, the error consist (sic) of the date which should be August, 1991 instead of June, 1991."[30] (Italics supplied)

As to date and the situs of the bribery, there has been, therefore, an inconsistency between the allegation and the proof, between the complaint and the evidence presented in support thereof. This goes into the credibility of the accusation and the merits of the case.

The answers of Agapito to questions on cross-examination revealed Agapito's bias and untruthfulness.

"ATTY. SIPIN

Q

Mr. witness, of course, you know the difference between the sala of Judge Escaño and his house. Don't you? (sic)

A

Yes, sir, I know.

Q

This morning you were categorical in admitting that the agreement for you to give P50,000.00 to Judge Escaño took place in the sala. Do you recall that?

INVESTIGATOR

Only the 'Kasunduan'.

WITNESS

A Yes, sir, I am sure.

ATTY. SIPIN

Q

Why is it that in your Affidavit which is translated into the dialect you stated that the agreement took place in the house of Judge Escaño?

A

On June, 1991 I have no money, sir. I was still going to raise money at that time.

Q

Assuming that that is correct considering that you already agreed to give P50,000.00 in the sala, why is it that in your Affidavit you stated that you still bargained from P70,000.00 to P50,000.00. Why did you still bargain while there was already an agreement in the sala?

A

I already bargained at that time at the sala of Judge Escaño, sir.

Q

Yes, precisely, considering that there was an agreement for you to give P50,000.00 in the sala when you went to his house? (sic)

Q

There was an agreement in the sala for you to give P50,000.00 to Judge Escaño. So, considering that, why did you still have to bargain when you went to his house from P70,000.00 to P50,000.00. Will you explain?

A

No, sir, I did not bargain. We had already agreed in the amount of P50,000.00.

Q

Why did you sign this Affidavit in English dated November 18, 1992?

A

Yes, sir, I signed the Affidavit thinking that the date in the Affidavit is August 2, 1991.

Q

Did you not read the Affidavit before you sign (sic) it?

ATTY. TAN

Again, he has already testified that he is illiterate.

INVESTIGATOR

Answer the question.

ATTY. SIPIN

Q

Did you read the Affidavit before you sign (sic) it?

A

Fiscal Castaños read the Affidavit, sir.

ATTY. SIPIN

Q

And you heard the month, June, 1991 when he read it to you?

A

I did not notice that, sir. I thought what he said was August.

Q

You signed this Affidavit dated November 18, 1992. When did you first discover this mistake about the date?

A

Only during the first hearing of this case, sir.

Q

How did you come to discover it?

A

My lawyer explained it to me, sir.

Q

You are referring to whose lawyer?

A

Atty. Tan, sir.

Q

How did he explain to you. Please relate how you came to discover?

A

He asked me to explain why the date in the Affidavit is June, whereas, it should have been August when I raised the money only in August.

Q

Will you tell us how your lawyer came to know that you have money on August 2?

A

Because of the Deed of Sale which evidenced the sale of my motor vehicle. It is a Deed of Sale made on August 2, sir."[31]

The scenario presented in Agapito's affidavit referred to an event that transpired in only one occasion, i.e., the night at the rented house of the respondent judge wherein the judge demanded the amount of P70,000.00 but was given only P50,000.00 in exchange for a verdict of acquittal in Criminal Case No. 3567-0. On the other hand, during the investigation, Agapito related two separate incidents: (1) the day Agapito went to the court sala of the respondent judge where the illicit agreement to give P50,000.00 to the latter transpired and (2) the night when the respondent judge actually received the said amount from Agapito at the former's rented house. It is highly unlikely for the petitioner to have confused the material facts that resulted in the extortion case under review.

Once again, we rule that, although, as a general rule, affidavits are either inaccurate or lacking in details, jurisprudence forewarns us that, when serious and inexplicable discrepancies are present between a previously executed sworn statement of a witness and his testimonial declarations with respect to one's participation in a serious imputation such as bribery, there is raised a grave doubt on the veracity of the witness' account.[32]

Thus, Agapito's story cannot be accepted by this Court hook, line and sinker, applying the rule on variance between allegation and proof as laid down in the aforecited cases.

The affidavit in question was prepared by no less than the petitioner himself who had been assigned as City Prosecutor of Ormoc City since 1986.[33] Considering the gravity of the imputation he was then contemplating against the respondent judge at the time he convinced Agapito to execute the said affidavit, the petitioner should have exercised extreme care in the formulation of the details pertaining to the act of bribery complained of with utmost accuracy. As contradistinguished from affidavits which, more often than not, are hastily prepared by police officers during custodial interrogation or those which are submitted for purposes of preliminary investigation to thwart cases of arbitrary or illegal detention, we do not see any cogent reason why the petitioner in this case would make the subject affidavit in such a haphazard manner. He could have availed himself of the luxury of time to build a stronger case against the respondent judge. The extortion case apparently sprang from a letter addressed to the respondent judge,[34] not to the Chief Justice as erroneously claimed by the petitioner[35] and the authorship of the said letter is hardly verifiable. The allegation that the subject affidavit was hurriedly made, in lieu of a question-answer format, on account of Agapito's being a businessman[36] is a lame excuse for its inaccuracies. We consider that the only other witness presented by the petitioner to supposedly corroborate the confusing contents thereof is a police officer, Master Sergeant (SPO4) Efren Abanes, who, as the records reveal, allegedly allowed a golden opportunity for entrapment to slip away from his hands.[37] That Sgt. Abanes did not do his duty to entrap as was expected of him gives the lie to the allegation that he was a witness to the illegal transaction before its consummation.

In order that the allegation of a charge of this nature may not be considered a fairy tale, evidence other than the doubtful and questionable verbal testimony of a lone witness should be adduced. Entrapment should have been pursued. Evidence of a reasonable report to police authorities should have been presented. Record of where the bribe money came from, its specific denominations and the manner respondent accepted and disposed of it should have been clearly shown.

In the light of the foregoing circumstances, there is justification in the allegation of the respondent judge that the filing of this case was ill-motivated being retaliatory in nature and aimed at deflecting the public interest on the cases filed at the instance of the said judge against the petitioner for the latter's corrupt activities.[38] After he

received the Commander Kontra Abuso letter, the respondent judge asked for investigative assistance from the NBI Office at Tacloban City. He furnished further information on some reported corrupt activities of the petitioner who used respondent's name in court.[39] Consequently, after the NBI established a prima facie case against the petitioner for grave misconduct (graft and corruption), the respondent judge endorsed the matter to the Secretary of Justice. The said petitioner was placed under preventive suspension after a formal charge was made on November 3, 1992.[40] It is significant to note at this point that Agapito's affidavit was executed on November 18, 1992 and the instant case against the respondent judge was filed on February 12, 1993. It is clear that the formal charge for grave misconduct against the petitioner preceded the serious charges against the respondent judge in this case. Our pronouncement that "to allow complainant to trifle with the Court, to make use of the judicial process as an instrument of retaliation, would be a reflection on the rule of law" bears reiteration.[41]

On the corollary issue of whether or not the decision in Criminal Case No. 3567-0 was the product of a prevarication as inferred in the Report and Recommendation, a careful perusal of the said decision, dated August 13, 1991, shows that the respondent judge presented the pertinent facts of the said illegal logging case against the accused Agapito in connection with Criminal Case No. 3463-0 for Qualified Theft against the same accused and thereafter discussed his ratiocinations in support of the grounds he relied upon to dismiss the case, namely: (1) denial of the accused's right to due process; and (2) application of double jeopardy.[42]

Anent the first ground, the respondent judge predicated the denial of the accused's right to due process on the lack of a valid information regarding the illegal logging case against the accused Agapito who, through counsel, seasonably raised the issue of the prosecution's failure to conduct the requisite preliminary investigation. In his decision, Judge Escaño pointed out that the Office of the City Prosecutor,[43] after having established a prima facie case against the accused, inadvertently returned to the respondent judge's court the records of Criminal Case No. 3567-0 which was previously remanded after the accused Agapito questioned the validity of the subject information. Since the return of the case records was made without the prosecution having prepared a new information, technically, the accused in the illegal logging case stood charged under the same defective information.[44]

As to the second ground, the respondent judge justified the application of double jeopardy by the following findings: (a) that both cases for qualified theft and illegal logging involved the same accused Agapito and referred to the same subject matter and incident, i.e., the unlawful taking and possession of lumber/timber; (b) that in the case for qualified theft, the accused were both arraigned under a valid information; and (c) that the dismissal of the case for qualified theft was ordered by the respondent judge at the instance of the prosecution without the consent of the accused.[45]

It bears noting at this point that the respondent judge, on cross-examination, manifested that it was only after studying the records of the illegal logging case during the decision-making period that he came to realize that the filing of the second case constituted double jeopardy. When the motion to quash was filed by Agapito's counsel, his attention was focused on the fact that there were two distinct cases involved, one for qualified theft, penalized under the Revised Penal Code, and another for illegal logging, penalized under a special law.[46] We cannot hold the respondent judge administratively liable for an erroneous ruling on first impression and infer malice from having rendered a decision rectifying an earlier impression without proof beyond doubt of a conscious and deliberate intent on his part to commit an injustice by such acts.[47]

The petitioner, in his attempt to prove that the assailed decision of the respondent judge was for a valuable consideration and not on the grounds as professed therein, argues that, since a motion to quash on the ground of double jeopardy filed by the accused Agapito was denied and a motion to reconsider the same was also denied by the respondent judge, the acquittal of the accused based on the same ground after trial without the accused

invoking double jeopardy as a defense, is highly suspicious. Furthermore, the petitioner correlates the postponement of the date of promulgation of the assailed decision from July 10, 1991 to August 14, 1991 to the vacillating positions taken by the respondent judge on account of the valuable consideration allegedly involved in resolving the illegal logging case against the accused Agapito.

Time and again we have held that "as a matter of public policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous." [48] Hence, no fraud, dishonesty or corruption can be ascribed to the respondent judge who explained during the investigation that the re-scheduling of the date of promulgation of the decision in Criminal Case No. 3567-0 was brought about by the motion for postponement filed by the accused's counsel who testified during the investigation that his client, accused Agapito, had then suffered a mild stroke that would prevent his attendance at the scheduled promulgation. [49] In addition to his explanation, the respondent judge, on cross-examination, stated why the decision was dated August 13, 1991 when the promulgation thereof was set on August 14, 1991. As a matter of practice, he pens his decisions days before the scheduled promulgation but leaves the dispositive portion for typing at a time close to the date of promulgation. [50] This Court does not see anything irregular in this practice in the absence of malice or any wrongful conduct in adopting the same. In fact, the practice should be encouraged.

Moreover, if the petitioner were fully convinced that the assailed decision was grossly erroneous, he could have availed of the remedy of certiorari immediately after its promulgation. [51] In the case of *Negado v. Autajay*, [52] we explicitly held that:

"x x x Even assuming that the documents do reflect some error on the part of respondent Judge committed in connection with the cases in question, the error could not be characterized as so grave and on so fundamental a point as to warrant condemnation of the Judge as patently ignorant or negligent. As pointed out by the Honorable Investigator -

`** at most such error could only be either of judgment or of jurisdiction or, simply, judicial in nature. These errors could have been avoided or remedied through further judicial processes, and not through an administrative complainant (sic) such as the instant case.

When a person seeks administrative sanction against a judge simply because he has committed an error in deciding the case against such person,** when such error can be elevated to a higher court for review and correction, the action of such person can only be suspect." [53]

Respondent judge's act of citing Agapito in contempt of court for executing the affidavit, dated November 18, 1992, in connection with this case is another matter. Having found Agapito guilty of contempt for sustaining a charge for bribery, respondent sentenced Agapito to suffer imprisonment for a period of six (6) months. This act of respondent judge which obviously smacks of retaliation rather than the upholding of the court's honor is appalling and violative of the mandate that "a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary." [54]

For this matter, Prosecutor Castaños, on March 12, 1993, filed before us an Urgent Motion to Place Respondent under Preventive Suspension Pending Investigation, calling our attention to certain facts that could persuade us to grant the same. Prosecutor Castaños narrated therein the events that transpired after Judge Escaño issued the Order, dated February 16, 1993, directing Agapito to show cause within three days from notice why he should not be held in contempt of court for executing the affidavit in support of Prosecutor Castaños' case against the respondent judge. Thus, according to the petitioner-prosecutor, Agapito filed his Answer on February 22, 1993 through counsels Atty. Carlos Tan and Atty. Remegio Torres who simultaneously filed a Notice of Appearance and a Motion for Inhibition against Judge Escaño with respect to the contempt proceedings against Agapito.

On the same date, February 22, 1993, Judge Escaño, without conducting any hearing as required by the rules, issued the assailed Order finding Agapito guilty of contempt of court and sentencing him to a six-month imprisonment for having executed the affidavit dated November 18, 1992. In the same Order, the respondent judge denied the Motion for Inhibition and the Entry of Appearance of Agapito's counsels for non-compliance with the rules regarding proper substitution of attorney.

Acting on the above urgent motion of Prosecutor Castaños, this Court, on March 15, 1993, resolved to place Judge Escaño under preventive suspension effective upon notice. This triggered the filing of an ex-parte motion to set aside our said resolution by Judge Escaño insofar as it placed him under preventive suspension. The respondent judge, in his motion, insists that the contempt citation against Agapito was a legitimate exercise of the preservative power of the court and its issuance was not meant to intimidate Agapito as there was no need for such intimidation inasmuch as Agapito's affidavit did not pose any threat on Judge Escaño since the same was perjured.

In the same ex-parte motion, the respondent judge categorically claims that the basis of his contempt citation against Agapito was the affidavit of the latter attached to the complaint of Prosecutor Castaños with the Office of the Deputy Ombudsman-Visayas which Judge Escaño was made to answer and not the instant administrative case before us, as alleged by the petitioner.

Whether or not the Affidavit, dated November 18, 1992, utilized by Judge Escaño as basis of the contempt citation, was attached to the complaint before the Deputy Ombudsman-Visayas or to the petition before us does not change the fact that, as borne out by the records, Judge Escaño wielded judicial power in a harsh and oppressive manner when he issued the show-cause order of February 16, 1993 and the contempt order of February 22, 1993 against Agapito under Criminal Case No. 3567-0, the illegal logging case, which had long been decided in August, 1991 in favor of then accused Agapito, now a witness in this administrative case. The respondent judge ought to know that the procedure he adopted in the exercise of his contempt powers was certainly irregular and improper.

It is an oft-repeated rule that the power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the due administration of justice.[55] Judges, however, should exercise their contempt powers judiciously and sparingly, with utmost restraint, and with the end in view of utilizing their contempt powers for correction and preservation, not for retaliation or vindication.[56]

It is true that, in the case at bench, respondent judge, after having received a copy of Agapito's affidavit in connection with the petitioner's administrative charges against him, directed Agapito to show cause within three days from notice why he should not be held in contempt of court in an Order, dated February 16, 1993, the pertinent portion of which reads:

"The allegations of Francisco Agapito are outrageous lies and considering the fact that such allegations have something to do with the administration of justice by this court, the same tend to degrade the administration of justice. xxx"[57]

but, without the benefit of hearing required in Rule 71, Section 3 of the Rules of Court, respondent judge, in an Order, dated February 22, 1993, sentenced Agapito guilty for contempt of court on account of the allegations he made in his affidavit, dated November 18, 1992. Such failure to afford Agapito the opportunity to be heard as a matter of due process of law deserves administrative sanction. In the case of *Lim v. Domagas*,[58] we held that:

"xxx while judges should not be disciplined for inefficiency an account merely of occasional mistake or errors of judgment, it is imperative that they be conversant with basic legal principles xxx."[59]

In the more recent case of *Chin v. Gustilo, et al.*,^[60] we stated, thus:

"xxx we have stressed the importance of the duty of members of the judiciary to keep abreast of the laws, rulings and jurisprudence affecting their jurisdiction. (*Vasquez v. Malvar*, 85 SCRA 10 [1978]; *Ajeno v. Inserto*, 71 SCRA 166 [1976]; *Aducayen v. Flores*, 51 SCRA 78 [1973]). It is not too much to expect that judges show acquaintance with statutes, procedural rules and authoritative doctrines. xxx"^[61]

When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.^[62] In both instances, the judge's dismissal is in order.^[63] After all, faith in the administration of justice exists only if every party-litigant is assured that occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles.^[64] Moreover, witnesses against erring judges cannot come out in the open to help the Judiciary in disrobing its inept members if we allow judges to abuse their judicial discretion, more particularly with respect to the exercise of their contempt powers.

In this case, there is a clear indication in the aforementioned Orders of the respondent judge of how strongly he felt about the tainted image of his court by virtue of Agapito's affidavit that the procedural law and the applicable jurisprudential rules involved were seriously and negligently overlooked in the process of expediting matters. This is not the proper decorum expected of judges who preside over courts of law lest they cease to be living symbols of justice. Accordingly, for having precipitately adjudged Agapito guilty of indirect contempt in utter disregard of the elementary rules of procedure, this court finds him guilty of gross ignorance of the law and grave abuse of judicial authority.

ALL THE FOREGOING CONSIDERED, judgment is hereby rendered:

- (a) DISMISSING the Complaint filed by Mr. Paquito Peregrino FOR FAILURE TO PROSECUTE;
- (b) DISMISSING the Petition of Prosecutor Lucas Castaños insofar as the charge of Grave Misconduct is concerned FOR LACK OF SUBSTANTIAL PROOF; and
- (c) FINDING the respondent Judge Francisco H. Escaño, Jr., GUILTY of gross ignorance of the law and grave abuse of judicial authority for which he is hereby DISMISSED from the service with forfeiture of all benefits and with prejudice to re-employment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations.

This decision is immediately executory. Judge Francisco H. Escaño, Jr. is hereby enjoined to cease and desist from performing any and all acts pertaining to his office.

Let a copy of this decision be attached to the records of the respondent with this Court.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.

Feliciano, J., on leave.

Puno, J., no part.

[1] Code of Judicial Conduct, Rule 1.01.

[2] Rollo, pp. 6-12

[3] Id., pp. 3-5.

[4] Id., p. 8.

[5] Ibid.

[6] Id., p. 6.

[7] Id., p. 7.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Id., p. 8.

[12] Id., pp. 9 and 12; See Agapito's Affidavit, dated November 18, 1992 at note 29, *infra*.

[13] Rollo, pp. 1-2.

[14] Id., pp. 35-38.

[15] Id., pp. 53-60.

[16] Id., p. 41.

[17] Id., p. 61.

[18] Id., pp. 70-80.

[19] Id., p. 178.

[20] Id., p. 214.

[21] Id., pp. 359 and 365.

[22] Rollo, Vol. II, p. 175.

[23] Report and Recommendation, pp. 3-6.

[24] Id., p. 7.

[25] Id., pp. 7-8.

[26] 99 SCRA 603, 610 [1980].

[27] Cited cases omitted.

[28] At page 214; Cited cases omitted; See also *In Re: Flordeliza*, 44 Phil. 608 [1923]; *Amosco v. Magro*, 730 SCRA 107 [1976]; *OCA v. Antonio*, 241 SCRA 331 [1995].

[29] Rollo, p. 12.

[30] TSN, August 20, 1993, pp. 37-39.

[31] TSN, September 1, 1993, pp. 35-38.

[32] *People v. Cruz*, 231 SCRA 759, 770 [1994] citing *People v. Casim*, 213 SCRA 390 [1992]; See *Palma v.*

Court of Appeals, 232 SCRA 714, 719 [1994].

[33] TSN, September 2, 1993, pp. 2-3.

[34] Answer, Annex "2"; Rollo, p. 255.

[35] Rollo, p. 8; TSN, September 2, 1993, p. 26.

[36] TSN, September 2, 1993, p. 21.

[37] TSN, September 1, 1993, pp. 66-68; 72-74.

[38] Answer, pp. 2-6; Rollo, pp. 215-219; TSN, September 2, 1993 (continuation), pp. 29-31.

[39] Exhibit "3"; Rollo, p. 230; TSN, September 2, 1993 (continuation), pp. 31-36.

[40] Exhibits "4", "5" and "6"; Rollo, pp. 253-258; TSN, September 2, 1993 (continuation), pp. 37-41.

[41] *Lim v. Antonio*, 125 SCRA 273, 277 [1983].

[42] Rollo, pp. 142-145.

[43] Of Ormoc City.

[44] Rollo, p. 143.

[45] *Id.*, pp. 143-144.

[46] TSN, September 6, 1993, pp. 21-30.

[47] See *Basbacio v. Office of the Secretary, Department of Justice*, 238 SCRA 5, 12 [1994].

[48] *Assistant Provincial Prosecutor Antonio P. Chin v. Judge Tito G. Gustilo, et al.*, A.M. No. RTJ-94-1243, August 11, 1995 citing *Revita v. Rimando*, 98 SCRA 619 [1980] and *Abad v. Bleza*, 145 SCRA 1 [1986]; see also *Dela Cruz vs. Concepcion*, 235 SCRA 597 [1994]; *Abiera v. Maceda*, 233 SCRA 520 [1994] and *Libarios v. Dabalos*, 199 SCRA 48 [1991].

[49] TSN, September 2, 1993 (continuation), pp. 8-11.

[50] TSN, September 6, 1993, pp. 39-44.

[51] *People v. Gomez*, 20 SCRA 293, 296-297 [1967].

[52] 222 SCRA 295 [1993].

[53] At pages 297-298.

[54] Code of Judicial Conduct, Rule 2.01; *Masangcay v. Aggabao*, 238 SCRA 427, 440 [1994]; *Padilla v. Zantua, Jr.*, 237 SCRA 670, 675 [1994]; *Chan v. Agcaoili*, 233 SCRA 331, 334 [1994].

[55] *Halili v. Court of Industrial Relations*, 136 SCRA 112, 135 [1985] citing *Slade Perkins v. Director of Prisons*, 58 Phil. 271; *In re Kelly*, 35 Phil. 944; *Commissioner of Immigration v. Cloribel*, 20 SCRA 1241 and *Montalban v. Canonoy*, 38 SCRA 1.

[56] *De Guia v. Guerrero, Jr.*, 234 SCRA 625, 630 [1994]; *Baja v. Macandog*, 158 SCRA 391, 398 [1988].

[57] Exhibit "D"; Rollo, p. 40.

[58] 227 SCRA 258 [1993].

[59] At page 263 citing Ubongan (sic) v. Mayo, 99 SCRA 30 [1980] and Ajeno v. Inserto, 71 SCRA 166 [1976].

[60] See note 48, *supra*.

[61] At page 7.

[62] See Carreon v. Mun. Judge Flores, 64 SCRA 238 [1975].

[63] Guillerma de los Santos-Reyes v. Judge Camilo O. Montesa, Jr., Pairing Judge, Branch 18, Regional Trial Court, Malolos, Bulacan, Adm. Matter No. RTJ-93-983, August 7, 1995; Estoya v. Abraham-Singson, 237 SCRA 1 [1994]; Garganera v. Jocson, 213 SCRA 149 [1992]; Cruz v. Nicolas, 194 SCRA 639 [1991].

[64] Spouses Julio V. Cui and Aresia Obsioma-Cui v. Judge Job B. Madayag, RTC, Br. 145, Makati, A.M. No. RTJ-94-1150, June 5, 1995 citing Libarios v. Dabalos, 199 SCRA 48, 56.

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